



DAVE JONES
Insurance Commissioner

September 12, 2018

The Hon. Maxine Waters
Ranking Member
Committee on Financial Services
U.S. House of Representatives
4340 Thomas P. O'Neill, Jr. Federal Office Building
Washington, DC 20515

Re: H.R. 6743 – The Consumer Information Notification Requirement Act - OPPOSE

Dear Ranking Member Waters:

As California's Insurance Commissioner, I write to express my objections to the "Consumer Information Notification Requirement Act" (HR 6743) and urge you to oppose the legislation in its current form, which will undermine California's stronger data security protections and California's ability to protect insurance consumers in this state.

Insurance companies in California are subject to strict regulation by my Department, and one of my primary responsibilities is to protect policyholders by ensuring these companies are taking necessary steps to safeguard the many kinds of highly sensitive customer data they collect and retain. In California, business entities are subject to our state data security and breach notification laws, including California Civil Code sections 1798.80-1798.89, 1798.91 & 1798.90.1.

I and other state insurance regulators also have a number of regulatory tools beyond state data security laws to protect consumers from insurer breaches. California Insurance Code sections 791.01-791.29 establish personal information collection, use, and disclosure standards applicable to insurers, agents and insurance support organizations. Title 10, California Code of Regulations sections 2689.12-2689.20, which expressly reference the Gramm-Leach-Bliley Act, set forth standards that insurance entities must meet to be in compliance with federal and state information security laws and regulations.

HR 6743 would frustrate California's authority on several levels. HR 6743 would not only preempt the existing privacy notification regulatory framework developed over years of experience at the state level, it would also significantly weaken the duties currently imposed on entities transacting insurance in California to protect or safeguard information and to investigate and mitigate following a breach.

For example, HR 6743 would substantially limit the circumstances for consumer notification of an information breach so that notification is required only when the breach is "reasonably likely to result in identity theft, fraud, or economic loss." (See H.R. 6743, § 2.) California law, by contrast, *always* requires notification to consumers when personal information is reasonably believed to have been acquired by an unauthorized person, irrespective of any subjective judgment as to whether such acquisition is "reasonably likely" to result in theft, fraud or financial harm that may befall the consumer. (Cal. Civ. Code §

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1798.82(a).) Additionally, irrespective of whether an insurer is domestic or non-domestic, California law requires insurers and other businesses to notify the Attorney General whenever a breach affects more than 500 California residents. HR 6743 would preempt this requirement and hinder California's ability to monitor information breaches affecting Californians.

This bill would roll back California's stronger consumer protections in other ways as well. Of paramount concern is the fact that HR 6743 would preempt the requirement that insurers and other financial businesses provide identity theft prevention and mitigation services in response to an information security breach. (Cal. Civ. Code § 1798.82(d)(2)(G).)

The standards proposed in H.R. 6743, which would preempt California's laws, simply do not comport with the high value that Californians place on their right to privacy – a right expressly added to California's constitution in 1972. (Cal. Const. art. I, § 1.)

In addition to these concerns, the dangers created by the proposed preemption provisions in this bill cannot be overstated. H.R. 6743 appears to pave over nearly two decades of established law under Gramm-Leach-Bliley permitting States to create laws that afford any person protections that are "greater than the protection provided under [Gramm-Leach-Bliley]..." (See 15 U.S.C. 6807(b).) Instead, ostensibly for *any* type of business subject to Gramm-Leach-Bliley, H.R. 6743 would eliminate this firmly entrenched protection, and replace it with a broad preemption of any state protection "...having the force and effect of law of any State, ... with respect to a financial institution or affiliate thereof securing personal information from unauthorized access or acquisition, including notification of unauthorized access or acquisition of data." Because Gramm-Leach-Bliley addresses data privacy as well as information security, the preemption proposal in HR 6743 has the potential to undermine numerous state laws granting consumer privacy protections, including the California Financial Information Privacy Act and the California Consumer Privacy Act, which Governor Brown just signed into law in June of this year.

When they entrust their sensitive personal financial and health information to insurers, consumers have a right to expect that their information is secure and that they will be properly notified in the event that information is compromised. I urge you to oppose this legislation that will significantly limit my tools and authority to protect our insurance policyholders in California. Preemptive federal standards in this space will not only weaken existing consumer protections, but may inhibit future enhancements to data security practices and innovation necessary for regulators and companies to adapt to evolving threats.

Please do not hesitate to contact me or Bryant Henley at (916) 492-3558 regarding this important consumer protection issue.

Sincerely,



DAVE JONES
Insurance Commissioner

cc: Representative Ed Royce
Representative Brad Sherman
Representative Juan Vargas